



DEPARTMENT OF THE TREASURY
WASHINGTON, DC 20220

June 25, 2018

VIA ELECTRONIC MAIL

Austin R. Evers
American Oversight
1030 15th St. NW, Suite B255
Washington, DC 20005

Email: foia@americanoversight.org

Re: FOIA Request 2017-06-001

Dear Mr. Evers:

This is the final response of the Department of the Treasury (Treasury) to the above-referenced Freedom of Information Act (FOIA) request dated May 22, 2017.

Your request to DO seeks the following:

- All records responsive to the OGE data call sent on April 28, 2017, attached hereto as Exhibit A. American Oversight seeks the production of those records regardless of whether or not they have been – or will be – provided to OGE.

Your request to DO seeks, in the alternative, the following:

- If, at the time of your search, your agency has made a determination not to comply with the OGE data call, whether in whole or in part, American Oversight seeks all records reflecting the basis for the decision not to comply with the data call. Please include as responsive any records reflecting any legal or policy basis for not complying with the data call as well as any records reflecting any guidance, direction, or instruction received by your agency regarding compliance with the data call.

Your request has been processed under the provisions of the FOIA, 5 U.S.C. § 552.

A reasonable search of DO files located 5 documents, totaling 14 pages, responsive to the first part of your request. These documents have been made publicly available, in full and without redaction, in the document located at the following website at pages 109-122:

[https://www.oge.gov/web/OGE.nsf/All%20Documents/67460009B646BBF88525813800566276/\\$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf?open](https://www.oge.gov/web/OGE.nsf/All%20Documents/67460009B646BBF88525813800566276/$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf?open). Copies of pages 109-122 are enclosed.

In regards to your alternative request, as Treasury complied fully with the subject OGE data call, the alternative request is not applicable.

You may seek dispute resolution services from our FOIA Public Liaison by contacting Paul Levitan, Director, FOIA & Transparency at (202) 622-8098 or email at FOIAPL@treasury.gov.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may write directly to:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
(202) 741-5770
(877) 684-6448

If you have any questions concerning this action, please contact me at (202) 927-8989, or by email at karen.edwards@treasury.gov. Please reference FOIA case #2017-06-001 when inquiring about this case.

Sincerely,

Karen M.
Edwards

Digitally signed by
Karen M. Edwards
Date: 2018.06.25
13:29:16 -04'00'

Karen Edwards
FOIA Analyst
FOIA & Transparency
Privacy, Transparency, and Records (PTR)

Enclosure
Original FOIA request
Responsive document set (14 pages)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 15, 2017

MEMORANDUM FOR: ANTHONY SAYEGH
ASSISTANT SECRETARY FOR PUBLIC AFFAIRS

FROM: Rochelle F. Granat *RF*
Assistant General Counsel
General Law, Ethics and Regulation
and Designated Agency Ethics Official

Elizabeth A. Horton *Eth*
Deputy Assistant General Counsel (Ethics) and
Alternate Designated Agency Ethics Official

SUBJECT: Participation in Matters Regarding Fox News Channel

This memorandum grants you an authorization pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) to participate in matters that may involve your former client, Fox News Channel.

You are the Assistant Secretary for Public Affairs. Prior to this position, you were a contributor to Fox News Channel, from 2013 until 2017. As the Assistant Secretary for Public Affairs, you develop and implement communications strategy for the Department and advise officials within the Department and its bureaus how best to communicate issues and priorities of public interest.

Subpart E of the Standards contains provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of your official duties. Due to your former role as contributor, you have a "covered relationship" with Fox News Channel, until one year following termination of that contract.

5 C.F.R. § 2635.502(b)(1)(iv). As such, you are prohibited from participating in a "particular matter involving specific parties" when "a person with whom you have a covered relationship is or represents a party" to the matter, and the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter.

5 C.F.R. § 2635.502(a)(1). Therefore, absent authorization, or affirmative application of this reasonable person standard, you would not be permitted to participate in a particular matter involving specific parties in which Fox News Channel is a party or represents a party until the one-year period has elapsed.¹

Pursuant to the Standards, a particular matter involving specific parties "typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties." 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties include such matters as contracts, grants, licenses, product

¹ Under the terms of the Ethics Pledge required under Executive Order 13770 (January 28, 2017), this "covered relationship" lasts two years. By separate memorandum White House Counsel has approved a waiver of the similar restrictions of paragraph 6 of the Ethics Pledge.

approval applications, litigation, and investigations. In the context of your specific responsibilities, a likely example of a particular matter involving specific parties in which Fox News Channel is a party could include a request by Fox News Channel for an interview with a senior Treasury official.

Under section 2635.502(d), even when an employee's participation in a particular matter involving specific parties likely would create an appearance of partiality, "the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the Government's programs and operations." Section 2635.502(d) identifies factors to be taken into consideration, which include:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have on the financial interests of the person involved in the relationship;
- 3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

After weighing these factors, we issue this authorization to mitigate any appearance concerns with your participation in matters involving Fox News Channel. The interest of the Government in your participation outweighs concern that a reasonable person might question your impartiality in the administration of these matters.

First, Fox News Channel is a 24-hour news network which delivers breaking news and political and business news. It has consistently been one of the top cable news networks for the past decade with over one million viewers per day. During your time with Fox News Channel, you were only a contributor, and not a full-time employee.

Second, Fox News Channel is likely to report on most, if not all, major Departmental matters. That will be the case regardless of who is in the position of Assistant Secretary for Public Affairs. You have no financial interest in Fox News Channel and are not in a position to personally benefit from this relationship. The nature of your role in matters involving Fox News Channel will be communicating information regarding the Department. Fox News Channel will be there to report on issues involving the Department and not to advocate a particular position.

Third, you were appointed as the Assistant Secretary for Public Affairs for your expertise and experience. You have over two decades of strategy, communications and policy experience. You have worked for multiple news networks and on various political campaigns. You are the Department's most senior communications official and will be expected to handle communications for the Secretary on sensitive Departmental matters. It is essential that the Department have an effective, credible voice in these communications with the media to address

the many important issues that arise in this forum. There is no practical way to segregate your duties to shield you from engagement in matters that involve one of the major media organizations and not require you to recuse from nearly all of your duties. The need for you to participate in matters that might involve Fox News Channel is core to your responsibilities as Assistant Secretary.

Lastly, due to the short time period you contributed to Fox News Channel, your limited role there, and the interest of the Department to disseminate information to the public on matters involving the operations and policies of the United States government, the risk that a reasonable person would question your impartiality is remote, and Treasury's interest in your participation in these matters outweigh any concern of partiality.

In conclusion, after careful consideration of the provisions in 5 C.F.R. § 2635.502, we authorize you to participate in any such matter in which Fox News Channel is a party or represents a party.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 29, 2017

MEMORANDUM FOR: BRIAN CALLANAN
DEPUTY GENERAL COUNSEL

FROM: Rochelle F. Granat 
Assistant General Counsel
General Law, Ethics and Regulation
and Designated Agency Ethics Official

SUBJECT: Participation in Matters Regarding Cooper & Kirk PLLC

SUMMARY

This memorandum documents that I have granted you a limited authorization pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) to allow you to participate fully in policy matters related to housing finance reform even if an issue arises that might impact pending litigation in which your former employer, Cooper & Kirk PLLC represents one of several plaintiffs. Notwithstanding this limited authorization, you have elected to refrain from any participation in the management of the litigation, including any communication with your former employer concerning this matter.

BACKGROUND

As the Deputy General Counsel you are currently the only non-career employee in the Office of the General Counsel and you serve as Acting General Counsel. Prior to this position, you were a partner at Cooper & Kirk, from January 12, 2017 until March 9, 2017. Immediately prior to joining the firm, you served as Staff Director and General Counsel for the Senate Permanent Subcommittee on Investigations, having joined the Subcommittee in February 2015. As Deputy General Counsel and Acting General Counsel, you are a senior non-career legal and policy advisor to the Secretary, the Deputy Secretary, and other senior Treasury officials. .

Subpart E of the Standards contains provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Due to your former position with Cooper & Kirk, you have a "covered relationship" with the firm for one year following your appointment at Treasury. 5 C.F.R. § 2635.502(b)(1)(iv). As such, you are prohibited from participating in a "particular matter involving specific parties" when "a person with whom you have a covered relationship is or represents a party" to the matter, and the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter. 5 C.F.R. § 2635.502(a)(1). Therefore, absent authorization, or affirmative application of this reasonable person standard, you would not be

permitted to participate in a particular matter involving specific parties in which Cooper & Kirk is a party or represents a party until the one-year period has elapsed.¹

Pursuant to the Standards, a particular matter involving specific parties “typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.” 5 C.F.R. § 2640.102(1). Examples of particular matters involving specific parties include such matters as contracts, grants, licenses, product approval applications, litigation, and investigations.

Cooper & Kirk represents Fairholme Funds in pending litigation against the Department and the Federal Housing Finance Agency (FHFA) challenging an aspect of the conservator agreements Treasury and FHFA entered into with Fannie Mae and Freddie Mac (hereinafter, “GSE litigation”). Specifically, Fairholme is one of several plaintiffs challenging the variable net worth dividend under the agreements. You did no work related to the GSE litigation while you were at Cooper & Kirk.

I recognize that it is critical that a non-career OGC official be able to participate fully in sensitive housing finance reform policy discussions. Some of these discussions could at some point touch upon issues that might have an impact the litigation. I independently determined that to avoid any possible future impediment to your ability to provide appropriate advice to the Secretary and others on the important matter of housing finance reform, and out of an abundance of caution, a limited authorization is necessary and appropriate.

ANALYSIS

Under section 2635.502(d), even when an employee’s participation in a particular matter involving specific parties likely would create an appearance of partiality, “the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the Government’s programs and operations.” Section 2635.502(d) identifies factors to be taken into consideration, which include:

- 1) The nature of the relationship involved;
- 2) The effect that resolution of the matter would have on the financial interests of the person involved in the relationship;
- 3) The nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- 4) The sensitivity of the matter;
- 5) The difficulty of reassigning the matter to another employee; and
- 6) Adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

¹ Under the terms of the Ethics Pledge required under Executive Order 13770 (January 28, 2017), this “covered relationship” lasts two years. By separate memorandum White House Counsel has approved a waiver of the similar restrictions of paragraph 6 of the Ethics Pledge.

Specifically, you served only briefly as a partner at the firm of Cooper & Kirk and while there you did not participate in any matters related to Fairholme or the GSE litigation. You have no financial interest in the matter or the firm. Consideration of options for housing finance reform is a critically important and sensitive policy matter and it will be disruptive and impractical for you to participate in some but not all aspects of this matter. As discussions of housing finance reform options proceeds, it will be increasingly difficult to readily anticipate when deliberations might evolve into consideration of the litigation. Absent your ability to participate fully in this policy matter, there will be no non-career legal input into this sensitive high priority matter. As a result, the Secretary and other policy officials will be deprived of your advice and counsel on this matter; career staff in the Office of General Counsel will be deprived of your guidance and supervision on this matter. There is no other non-career official in the Office of the General Counsel to whom this responsibility could be assigned. Given the nature of your brief tenure at the firm, it is unlikely that a reasonable person with knowledge of the facts would question your impartiality if you were to participate.

After weighing the above factors, I granted this limited authorization to mitigate any appearance concerns with your participation in housing finance reform policy discussions should discussion touch on issues that could impact litigation in which Cooper & Kirk represents a plaintiff. The interest of the Government in your participation outweighs any concern that a reasonable person might question your impartiality in the administration of these matters.

However, notwithstanding this limited authorization, I understand that you will refrain from any participation in the management of the litigation, including any communication with your former employer concerning this matter.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 18, 2016

MEMORANDUM FOR KODY KINSLEY
ASSISTANT SECRETARY (MANAGEMENT)

THROUGH: Rochelle F. Granat 
Assistant General Counsel (General Law, Ethics & Regulation)
& Designated Agency Ethics Official

Elizabeth A. Horton
Deputy Assistant General Counsel (Ethics) & Alternate
Designated Agency Ethics Official

FROM: Hanoi Veras
Attorney Advisor

SUBJECT: Your Participation in Matters Involving the District of
Columbia

This memorandum serves to authorize your participation as Assistant Secretary for Management (ASM) in certain matters in which the District of Columbia is a party, in particular, matters related to the administration of the retirement plans for District of Columbia judges, teachers, police, and firefighters, and matters related to Treasury facilities located in D.C.

Prior to rejoining Treasury on June 27, 2016, you were the Director of Policy and Program Support for the District of Columbia Department of Human Services. You were generally responsible for developing policy and improving and implementing processes related to homelessness and social safety benefits. The Treasury matters involving or affecting the District of Columbia that come before your office are not related to those matters you participated in or were under your purview while Director of Policy and Program Support.

The Standards of Ethical Conduct prohibit an employee from participating in a "particular matter involving specific parties" when "a person with whom he has a covered relationship is or represents a party" to the matter, and the circumstances would cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter 5 C.F.R. § 2635.502(a)(1). You have a covered relationship with the District of Columbia for one year from the date of your departure. This covered relationship will end on June 26, 2017.¹

¹ The restrictions under paragraph two of the Ethics Pledge, prohibiting appointees from participating in any particular matter involving specific parties that is directly and substantially related to the appointee's former employer, do not apply to you because Executive Order 13490 exempts the District of Columbia from the definition of former employer.

Under section 2635.502(d), even where an employee's participation likely would create an appearance of partiality, "the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." Factors that may be taken into consideration include the following:

- 1) the nature of the relationship involved;
- 2) the effect that resolution of the matter would have on the financial interests of the person involved in the relationship;
- 3) the nature and importance of the employee's role in the matter;
- 4) the sensitivity of the matter;
- 5) the difficulty of reassigning the matter to another employee; and
- 6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Id. at § 2635.502(d).

After weighing these factors, we authorize your participation in Treasury matters involving the District of Columbia, provided that they are unrelated to the District of Columbia Department of Human Services, for the following reasons:

- You were Director of Policy and Programs for approximately seven months, a very brief time, and you have had no other positions with the District of Columbia.
- While at the District of Columbia Department of Human Services, you did not personally work on or supervise any matters involving retirement programs, Federal real estate matters, or any other issues directly involving Treasury. In fact, your work there did not require you to interact with the Department of the Treasury in any manner.
- The District of Columbia is a city/local government in which you have no personal financial interests. There is also no possibility that any specific party matters in which the District of Columbia is a party would have any direct and predictable financial effect on you.²
- The Office of D.C. Pensions reports to the ASM. Matters involving Treasury's relationship to the District of Columbia in connection with the administration of these retirement plans are sensitive, and on the rare occasion that a matter needs to be raised to the Assistant Secretary level, it would not be practical or appropriate to direct it to another Assistant Secretary or elevate to the Deputy Secretary.
- It is unlikely that any of the matters that would potentially come before the ASM would involve the District offices with which you interacted at the time of your District employment.

² Further, you do not hold any specific financial interests in the District of Columbia, so 18 U.S.C. § 208, the financial conflict of interest statute applicable to Government employees, is not triggered.

- Prior to leaving Treasury for the District of Columbia Department of Human Services, you worked at Treasury for approximately three years as a Management and Program Analyst, a Special Assistant to the Deputy Assistant Secretary for Management and Budget, and then as the Senior Advisor to the Assistant Secretary for Management. You bring unique experience to your role as Assistant Secretary, and reassignment of Management matters involving the District of Columbia would be inefficient and would deprive the Department of your expertise in these matters.

In conclusion, after consideration of the provisions in 5 C.F.R. § 2635.502, we authorize you to participate in matters in which the District of Columbia is a party or represents a party with the exception of any matter that involves the District's Department of Human Services. Given the factors discussed above, we conclude that a reasonable person would be unlikely to question your impartiality.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 9, 2017

ACTION MEMORANDUM

TO: DONALD F. MCGAHN
WHITE HOUSE COUNSEL

FROM: Rochelle F. Granat *RF*
Assistant General Counsel for General Law, Ethics and
Regulation and Designated Agency Ethics Official

SUBJECT: Waiver of Ethics Pledge Paragraph 6 for Anthony Sayegh

RECOMMENDATION

That you approve a waiver of paragraph 6 of the Ethics Pledge so that Anthony Sayegh, the Department of the Treasury's Assistant Secretary for Public Affairs, may participate in matters involving his former client, Fox News Channel.

RF Approve _____ Disapprove _____ Let's Discuss

BACKGROUND

Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," (EO) requires all Presidential appointees to sign an Ethics Pledge that, among other things, prohibits them from working on particular matters involving specific parties directly and substantially related to a former employer or client for a period of two years. Section 3 of the EO permits the President or his designee to grant a waiver of any restrictions contained in this pledge.

From 2013 until recently in 2017, Mr. Sayegh was a "contributor" for Fox News Channel. The President has appointed him as the Assistant Secretary for Public Affairs (Assistant Secretary). Pursuant to paragraph 6 of the Ethics Pledge, for two years from the date of his appointment he would not be able to participate in matters involving Fox News Channel. His ability to participate in such matters – essentially any matter in which Treasury would communicate with the major news networks - is integral to his position as Assistant Secretary for Public Affairs .

ANALYSIS

The Assistant Secretary develops and implements communications strategy for the Department and advises officials within the Department and its bureaus how best to communicate issues and priorities of public interest. Fox News Channel is a 24-hour news network which delivers breaking news and political and business news. It has consistently been one of the top cable

news networks for the past decade with over one million viewers per day.¹ It is in the interest of the Department and the public to inform the public on matters involving the operations and policies of the United States government. Fox News Channel is likely to report on most, if not all, major Departmental matters.

Mr. Sayegh has over two decades of strategy, communications and policy experience. He has worked for multiple news networks and on various political campaigns. The Assistant Secretary is the Department's most senior communications official and will be expected to handle communications for the Secretary on sensitive Departmental matters. It is essential that the Department have an effective, credible voice in these communications with the media to address the many important issues that arise in this forum. While Mr. Sayegh was only a Fox News Channel contributor, and not a full-time employee, and has no financial interest in Fox News Channel, his prior engagement with Fox News Channel triggers coverage under paragraph 6 of the Ethics Pledge.

There is no practical way to segregate the Assistant Secretary's duties to shield him from engagement in matters that involve one of the major media organizations and not require Mr. Sayegh to recuse from nearly all of his duties. The need for Mr. Sayegh to participate in matters that might involve Fox News Channel is core to his responsibilities as Assistant Secretary and outweighs any risk of an appearance of impartiality.

A waiver is therefore appropriate because: (1) it is in the Department's and public's interest; (2) it will be impossible for Mr. Sayegh to properly perform the duties of his position if he had to recuse from matters involving Fox News Channel; and (3) Mr. Sayegh's participation in matters involving Fox News Channel will have no impact on his financial interests.

CONCLUSION

Based on the above analysis, a waiver of paragraph 6 of the Ethics Pledge so that Mr. Sayegh may participate in matters involving his former client, Fox News Channel, is appropriate.

¹ "Fox News Channel Tops Cable in Total Day Viewers for Record Eight Consecutive Months," <http://press.foxnews.com/2017/02/fox-news-channel-tops-cable-in-total-day-viewers-for-record-eight-consecutive-months/>




DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

March 24, 2017

ACTION MEMORANDUM

TO: DONALD F. MCGAHN
WHITE HOUSE COUNSEL

FROM: Rochelle F. Granat 
Assistant General Counsel for General Law, Ethics and
Regulation and Designated Agency Ethics Official

SUBJECT: Waiver of Ethics Pledge Paragraph 6 for Brian Callanan

RECOMMENDATION

That you approve a narrow waiver of paragraph 6 of the Ethics Pledge, out of an abundance of caution, so that Brian Callanan, the Department of the Treasury's Deputy General Counsel, may participate fully in policy matters related to housing finance reform even if an issue arises that might impact pending litigation in which his former employer represents one of several plaintiffs.

Mr. Callanan has no financial interest in this matter and had no involvement whatsoever in the representation. Mr. Callanan will continue to refrain, however, from participation in the management of the litigation, including refraining from any communication with his former employer concerning this matter.

 Approve _____ Disapprove _____ Let's Discuss _____

BACKGROUND

Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," (EO) requires all Presidential appointees to sign an Ethics Pledge that, among other things, prohibits them from working on particular matters involving specific parties directly and substantially related to a former employer or client for a period of two years. Section 3 of the EO permits the President or his designee to grant a waiver of any restrictions contained in this pledge.

From January 12, 2017, to March 8, 2017, Mr. Callanan was a partner at Cooper & Kirk PLLC. On March 9, 2017, Mr. Callanan was appointed to the non-career position of Deputy General Counsel. Notwithstanding his brief tenure at Cooper & Kirk, pursuant to paragraph 6 of the Ethics Pledge, for two years from the date of his appointment he would not be able to participate in matters involving Cooper & Kirk. The firm represents Fairholme Funds in pending litigation against the Department and the Federal Housing Finance Agency (FHFA) challenging an aspect of the conservator agreements Treasury and FHFA entered into with Fannie Mae and Freddie Mac (hereinafter, "GSE litigation"). Fairholme is one of several plaintiffs challenging the

variable net worth dividend under the agreements. Mr. Callanan did no work related to the GSE litigation while he was at Cooper & Kirk.

Currently, Mr. Callanan is the only non-career appointee in the Office of General Counsel (OGC). By virtue of having been appointed to the position of Deputy General Counsel, he currently also serves as Acting General Counsel pursuant to 31 U.S.C. § 301(f)(1). I recognize that it is critical that a non-career OGC official be able to participate fully in sensitive housing finance reform policy discussions. Some of these discussions could at some point touch upon issues that might impact the litigation. I independently determined that to avoid any possible future impediment to Mr. Callanan's ability to provide appropriate advice to the Secretary and others on the important matter of housing finance reform, and out of an abundance of caution, a waiver is necessary and appropriate. Even with the waiver, Mr. Callanan will continue to refrain from participation in management of the litigation, including refraining from any communication with his former employer concerning this matter.


ANALYSIS

Paragraph 6 of the Ethics Pledge provides in pertinent part:

I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former client.

Section 2(d) of the Executive Order defines "directly and substantially related to my former employer" as "matters in which the appointee's former employer . . . is a party or represents a party." The GSE litigation is such a matter. The development of policy options for housing finance reform is not such a matter. Nevertheless, consideration of certain policy options could evolve into discussion of litigation strategy or the implication of the options for the plaintiffs. This possibility could implicate paragraph 6 of the Ethics Pledge.

A waiver of the Pledge to allow Mr. Callanan to participate in this policy matter without impediment (but not to extend to matters involving management of the GSE litigation) is warranted for the reasons discussed below.

Mr. Callanan served briefly as a partner at the firm of Cooper & Kirk. While at the firm, he did not participate in any matters related to Fairholme or the GSE litigation. Immediately prior to joining the firm, he served as Staff Director and General Counsel for the Senate Permanent Subcommittee on Investigations, having joined the Subcommittee in February 2017. 

It will be disruptive and impractical for Mr. Callanan to participate in some but not all aspects of this important policy matter. As discussions of housing finance reform options proceed, it will be increasingly difficult to readily anticipate when deliberations might evolve into consideration of the litigation. Absent Mr. Callanan's ability to participate in this policy matter, there will be no non-career legal input into this sensitive high priority matter. As a result, the Secretary and other policy officials will be deprived of his advice and counsel on this matter; career staff in the Office of General Counsel will be deprived of his guidance and supervision on this matter. There

is no other non-career official in the Office of the General Counsel to whom this responsibility could be assigned. Given the nature of his brief tenure at the firm, a reasonable person with knowledge of the facts would not question his impartiality if he were to participate.

I have determined that a waiver is therefore appropriate because: (1) it is in the Department's and public's interest; (2) it will be impossible for Mr. Callanan to fully perform the duties of his position if he had to recuse from aspects of the housing finance reform policy discussions; and (3) Mr. Callanan's full participation in this matter will have no impact on his financial interests.

CONCLUSION

Based on the above analysis, a waiver of paragraph 6 of the Ethics Pledge so that Mr. Callanan may participate fully in housing finance reform matters, is necessary and appropriate. The waiver record should note that Mr. Callanan will continue to refrain from participation in management of the litigation, including refraining from any communication with his former employer concerning this matter.